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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION**

SMASH TECHNOLOGY, LLC, a Nevada limited liability company; and MICHAEL ALEXANDER, an individual;

Plaintiffs,
vs.

SMASH SOLUTIONS, LLC, a Delaware limited liability company; JERRY “J.J.” ULRICH, an individual; and JOHN DOES 1-3;

Defendants.

SMASH SOLUTIONS, LLC, a Delaware limited liability company; JERRY “J.J.” ULRICH, an individual; and JOHN DOES 1-3;

Counterclaim Plaintiffs,
vs.

SMASH TECHNOLOGY, LLC, a Nevada limited liability company; and MICHAEL ALEXANDER, an individual;

Counterclaim Defendants.

**NOTICE OF FILING
SUPPLEMENTAL AUTHORITIES**

Civil No. 2:19-cv-00105-TC

Judge Tena Campbell

Defendants and Counterclaim Plaintiffs, Smash Solutions, LLC and Jerry Ulrich, through their counsel of record Matthew C. Barneck, Zachary E. Peterson, and Kristina H. Ruedas of the law firm RICHARDS BRANDT MILLER NELSON, give notice of the submission of supplemental authorities pursuant to DUCivR 56-1(e).

SUPPLEMENTAL AUTHORITIES

While preparing for the hearing set for August 14, 2019 at 10:00 a.m., the undersigned learned of supplemental authorities relating to the “writing requirement” referenced in Defendants’ Motion for Partial Summary Judgment (Doc. 32) at pp. 15-17 and their Reply Memorandum (Doc. 46) at 7-8. Specifically, the requirement of “instruments in writing duly executed” in 15 U.S.C. §1060(3) applies only to registered trademarks.

The supplemental authorities state that a writing is desirable but not required when a common law or unregistered trademark is transferred. See *Doeblers’ Pennsylvania Hybrids, Inc. v. Doebler, et al.*, 442 F.3d 812, 822 (3rd Cir. 2006) (“courts must be cautious in scenarios that do not involve clear written documents of assignment”); *TMT North America, Inc. v. Magic Touch GmbH*, 124 F.3d 876, 884 (7th Cir. 1997) (“Requiring strong evidence to establish an assignment is appropriate both to prevent parties from using self-serving testimony to gain ownership of trademarks and to give parties incentives to identify expressly the ownership of the marks they employ”); 3 MCCARTHY ON TRADEMARKS AND UNFAIR COMPETITION §18:4 (June 2019 Update) (“An assignment in writing is not necessary to pass common law rights in a trademark”).

Counsel will bring copies of these supplemental authorities to the hearing tomorrow for the Court and counsel.

DATED this 13th day of August, 2019.

RICHARDS BRANDT MILLER NELSON

/s/ Matthew C. Barneck _____
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*Attorneys for Defendants and
Counterclaim Plaintiffs*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13th day of August, 2019, I electronically filed the foregoing **NOTICE OF FILING SUPPLEMENTAL AUTHORITIES** with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

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